



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.[MD].No.1366 of 2016

S.P.Helen : Appellant

Vs.

1.The Principal Secretary of School Education,
Fort St. George, Chennai.

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

3.The Joint Director (Personnel),
DPI Campus, College Road,
Chennai-6.

4.The Chief Educational Officer,
Kanyakumari District at
Nagercoil.

5.The District Educational Officer,
Thuckalay,
Kanyakumari District.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 19.08.2013, made in W.P.(MD).No.13581 of 2013.

(*) Prayer in WP(MD). 13581/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus call for the records relating to the impugned proceedings of the 5th respondent in Na.Ka.No.9694/A1/2001 dated 10.5.2013 and consequential impugned proceedings of the 2nd respondent in O.Mu.No.94089/J3/2012 dated 28.6.2013 and quash the same as illegal and arbitrary and further directing the respondents to appoint the petitioner in the compassionate ground post based on the petitioners educational qualification as per her application dated 22.10.2001 to the 5th respondent.

For Appellant

: Mr.R.Subramanian

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents

: Mr.VR.Shanmuganathan,

Special Government Pleader



JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J.]

This Writ Appeal has been filed as against the order dated 19.08.2013, made in W.P.(MD).No.13581 of 2013.

2. The case of the appellant before the learned Single Judge was that her father Sundaram was working as Secondary Grade Teacher and he died in harness on 23.05.1999. He had rendered 34 years and 11 months service as Government servant. Thereafter, since the family of the appellant was in indigent circumstances, she applied for appointment on compassionate ground on 22.10.2001 to the fifth respondent. The Tahsildar, Kalkulam, by proceedings dated 11.10.2001, certified that no one in her family was in Government as well as in private job. The Tahsildar has also certified that her family was living in poverty line. However, during the period 2001-2006, there was a ban for compassionate appointment. Again, the appellant was asked to produce another certificate from the Tahsildar, Kalkulam, in the year 2004 regarding the status of her family. Accordingly, the appellant has produced the said certificate also. In the meanwhile, she got married to one B.Stalin on 24.01.2003. Her husband has been running a cell phone re-charging shop and his income is not enough for her family. However, the respondents have not chosen to consider the name of the appellant for appointment on compassionate ground for the past 11 years, though she is fully eligible for the said post. Again, the fifth respondent wanted the appellant to get another certificate from the Tahsildar, Kalkulam, regarding the current status of her family, which was also furnished by the appellant. However, by proceedings dated 10.05.2013, the fifth respondent informed the appellant that her application for compassionate appointment was rejected stating that her family is not in indigent circumstances. Since the said order was a non-speaking order, she preferred a representation to the Educational Minister, Tamil Nadu, in person and the same was forwarded to the second respondent, who, in turn, by proceedings dated 28.06.2013, has upheld the order dated 10.05.2013. Those orders were under challenge in the Writ Petition. The learned Single Judge, by order dated 19.08.2013, has dismissed the Writ Petition. Aggrieved over the same, the present Writ Appeal has been filed.

3. Today, when the matter was taken up for consideration, the learned counsel for the appellant submitted that the fifth respondent had rejected the claim only on the ground that her family members are working and the family is not in a poverty stricken condition. But the said reason is not correct, when the appellant has produced certificates of the Tahsildar to show that her family is in indigent circumstances. Thus, the appellant seeks to set aside the order of the learned Single Judge.



4. Countering the said submission, the learned Special Government Pleader submitted that as on date, the appellant's family is receiving a sum of Rs.1,28,640/- per annum by way of pensionary benefits. The younger son of the deceased is a B.E. Graduate and is employed in a mobile service centre and he is also earning income. As per G.O.Ms.No.998, dated 02.05.1981, if any member of the family is employed and is earning, then, the other legal heirs are not entitled for appointment on compassionate ground. Similarly, as per G.O.Ms.No.560, dated 03.08.1977, the appointing authority shall satisfy himself as to the indigent circumstances of the members of the family of the deceased. But, in the case on hand, the family of the deceased is not in indigent circumstances. Hence, the second respondent has confirmed the order of the fifth respondent and thereby, rejected the claim of the appellant for appointment on compassionate ground.

5. In reply, the learned counsel for the appellant submitted that it is incorrect to state that the other legal heir of the deceased Government servant is in job. The appellant's brother, by name Ranjith is working as a Technician in a mobile shop on daily wage basis and he is receiving only a paltry sum as salary and it is not sufficient to run the family. Since the family of the deceased is receiving a sum of Rs.1,28,640/- per annum towards pensionary benefits, it does not mean that the appellant's family is in affluent status. Thus, he sought for appropriate relief.

6. On a careful consideration of the materials available on record and also considering the facts and circumstances of the case, without going into the rival contentions put forth by either side, we are of the view that instead of giving a positive direction in this matter, it would be appropriate to set aside the impugned orders and remit the matter to the respondents for fresh consideration.

7. In the result, the order of the learned Single Judge dated 19.08.2013 is set aside and consequently, the impugned orders dated 10.05.2013 and 28.06.2013 are set aside and the matter is remitted to the respondents for fresh consideration. The respondents are directed to consider the matter afresh with regard to the granting of appointment on compassionate ground, by taking note of the present condition of the family and pass appropriate orders, on merits and in accordance with law, if there is no other legal impediment to do so. The said exercise has to be done within a period of six weeks from the date of receipt of a copy of this judgment.



8. The Writ Appeal is allowed as indicated above. No costs.

Sd/-

Assistant Registrar

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(*)Corrected order issued

/True Copy/

Sub Assistant Registrar

To

(*)TO BE SUBSTITUTED FOR THE ORDER ALREADY DESPATCHED ON 16.3.2017

1.The Principal Secretary of School Education,
Fort St. George, Chennai.

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

3.The Joint Director (Personnel),
DPI Campus, College Road,
Chennai-6.

4.The Chief Educational Officer,
Kanyakumari District at Nagercoil.

5.The District Educational Officer,
Thuckalay,
Kanyakumari District.

+1cc to M/s. R.SUBRAMANIAN Advocate in SR. No.9019

+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.9203

SML

JS/SV/MMS/07/03/2017/4P-8C

JS/SV/MMS/03/04/2017/4P-8C

JUDGMENT MADE IN
W.A. (MD) No.1366 of 2016
Dated: 17.02.2017