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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.04.2017
CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
W.P.(MD).No.10926 of 2016 and
W.M.P.(MD) Nos.8467 &8468 of 2016

G.Anitha

...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Home Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.Director General of Police,
Mylapore,Chennai-600 004.
- 3.Deputy Inspector General of Police,
Tirunelveli Range,Tirunelveli.
- 4.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the file of the third respondent in connection with the impugned order passed in Na.Ka.No. A2/7585/2008 dated 10.06.2008 as well as the impugned order passed by the fourth respondent in Na.Ka.No. A5/32292/2006 dated 20.07.2015 and quash the both as illegal and arbitrary and consequently direct the respondents to consider the petitioner's case in the light of judgment passed by this Court in 2016 (2) MLJ 570 (S.Ramakrishnan vs. Chief Educational Officer, Tirunelveli) for issuance of appointment under compassionate ground within the time limit that may be stipulated by this Court.

For Petitioner	: Mr.G.Thalaimutharasu
For Respondents	: Mr.J.Gunaseelan Muthaiah Government Advocate

O R D E R

This Writ petition is filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent in connection with the impugned order passed in Na.Ka.No.A2/7585/2008 dated 10.06.2008 as well as the impugned order passed by the fourth respondent in Na.Ka.No. A5/32292/2006 dated 20.07.2015 and quash both as illegal and arbitrary and consequently, to direct the respondents to consider the petitioner's case in the light of the judgment passed by this Court in 2016 (2) MLJ 570 (S.Ramakrishnan vs. Chief Educational



Officer, Tirunelveli) for issuance of appointment under compassionate ground within the time limit that may be stipulated by this Court.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

3. The brief facts that are necessary for the disposal of the present writ petition are as follows:-

3.1. The petitioner is the daughter of one I.Gurusamy. While the petitioner's father was in service, he died in the year 1992 leaving behind the petitioner's mother, petitioner and her sister. At the time of petitioner's father's death, the petitioner was only 9 years. Hence the petitioner's mother K.Govindhammal applied for compassionate appointment within the time limit. However, the application was kept in the waiting list.

3.2. As per the communications received from the fourth respondent, dated 18.11.1993, the respondents had some difficulty in considering the application of petitioner's mother and hence, the mother of petitioner gave another representation to consider her for the post of Sweeper. This application was also forwarded and pending with the respondents. Again, the petitioner, who is the daughter of the deceased, submitted another application in the year 2000 to consider her case for compassionate appointment. Now by the impugned order, the 4th respondent has rejected the petitioner's application on the ground that the application filed by the petitioner's mother is still pending in waiting list and therefore, the second application filed by another heir of the deceased is not maintainable. Challenging the impugned order, this writ petition is filed.

4. It is the specific case of the petitioner that petitioner's mother, as well as another sister had no objection for considering the petitioner's application for appointment on compassionate ground. It is also not the case of the respondents that there is any other legal impediment as per the rules to provide employment to the petitioner on compassionate ground.

5. The impugned order is not on the basis of any rules or administrative instructions. The petitioner's request was rejected only on the ground that her mother's application is in the waiting list, ignoring that the petitioner's mother has no objection. The petitioner's mother was not given any appointment on the basis of the application submitted by her earlier and the same is pending for a long number of years. The request of the other legal heirs due to change in circumstance cannot be straight away, rejected without any application of mind, unless there is specific rules, which prevent the respondents to consider the appointment of another legal heir on compassionate ground. The petitioner is also



another legal heir and this application for compassionate appointment is also pending for a long time and the same cannot be rejected by citing the mother's application which was pending for 24 years and the long delay is a good reason to give way for her daughter.

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6. The learned counsel for the petitioner also relied upon the judgment of the single judge of this court reported in (2016) 2 MLJ 570, S.Rmakrishnan Vs. Chief Educational Officer, Tirunelveli wherein, this court has held as follows:-

"The Government letter dated 27.12.2007 is relied on, in the impugned order. In my view, such procedure is arbitrary. Simply the request for Compassionate appointment cannot be rejected like this. It is a different matter if compassionate appointment is provided to the mother and the mother did not take up the employment and she wanted to provide the employment to the petitioner, who is the son. On the other hand, the application dated 01.09.2006 seeking compassionate appointment was only under consideration. Before the same was acted upon, request was made changing the nomination. With regard to this, it has to be only seen that the other dependents are not opposing for giving compassionate appointment to the dependent concerned. As rightly pointed out by the learned counsel for the petitioner, the judgments relied on by him, supports his claim. Hence the impugned order dated 06.01.2014 passed by the second respondent, is quashed and a direction is issued to the respondents to provide compassionate appointment to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order, if he is otherwise eligible"

7. The order impugned in the judgment relied upon by the petitioner is almost similar to the impugned order in the present case. Hence, this court has no hesitation to allow the writ petition and set aside the impugned order passed by the 4th respondent. Though, an order was passed earlier by the 3rd respondent on 10.06.2008 stating that the application filed by the petitioner was rejected by proceedings dated 07.02.2006 and this order is also challenged before this court and it is not the case of the respondents that the earlier order rejecting the petitioner's application for compassionate ground was passed on merit. The impugned order does not indicate that the earlier order dismissing the petitioner's application was passed on merits. In such circumstances, this court is unable to appreciate the reason stated by the 3rd respondent for rejecting the application of the petitioner earlier. The impugned order of the 3rd respondent in <https://hccases.mysgo.in/cases/12/3585> dated 10.06.2008 and the proceedings of 4th respondent dated 20.07.2015 are set aside and the 4th respondent is directed to consider the petitioner's application for



compassionate appointment purely on merits in accordance with law particularly in the light of the judgment of this court cited supra viz., 2016 (2) MLJ 570.

8. The petitioner is directed to submit a fresh representation along with the copy of this order as well as the judgment reported in 2016 (2) MLJ 570 within a period of two weeks from the date of receipt of a copy of this order. The 4th respondent shall forward the application of the petitioner within a period of three weeks thereafter. The 3rd respondent is directed to consider the petitioner's application purely on merits and in accordance with law within a period of two weeks from the date of receipt of the recommendations of the 4th respondent.

9. Accordingly, the writ petition is disposed of. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.Director General of Police,
Mylapore, Chennai-600 004.
- 3.Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.
- 4.The Superintendent of Police,
Tirunelveli District, Tirunelveli.

+1cc to Special Government Pleader, SR.No.19388
+1cc to M/S.G.Thalaimutharasu, Advocate SR.No.50010

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