



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.A. (MD) No.89 of 2013

A.Murugesh @ Pulamadan ... Appellant/Petitioner

Vs.

1.The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

2.The Assistant Elementary Educational Officer,
Kalakad,
Tirunelveli District.

... Respondents / Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 28.09.2011, made in W.P.(MD) No.10854 of 2009.

Prayer in WP(MD)No.10854/2009:-

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 in Lr.No. O.Mu.No. 1476/A1/2008 , dated 18/07/2009 on the file of the 1st respondent , and quash the same and further directing the respondents to appoint the petitioner on compassionate ground in their office as Office Assistant or Driver .

For Appellant : Mr.H.Arumugam
for Mr.K.Esakki

For Respondents : Mr.S.Chandrasekar
Government Advocate

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.H.Arumugam, learned counsel appearing for Mr.K.Esakki, learned counsel for the appellant and Mr.S.Chandrasekar, learned Government Advocate appearing for the respondents.



2.By consent of the learned counsel on either side, this Writ Appeal is taken up for final disposal.

3.This Writ Appeal is directed against the order dated 28.09.2011 made in W.P.(MD)No.10854 of 2009.

4.The appellant filed the abovesaid Writ Petition challenging the order passed by the first appellant, dated 18.07.2009, rejecting the application for grant of appointment on compassionate ground on the ground that it is a belated claim made five years after the demise of the employee. The appellant's father Thiru.P.Arumugam was serving as a Record Clerk in the office of the second appellant and died in harness on 13.10.2001, leaving behind the appellant's mother, the appellant, his younger brother and elder sister. The appellant's younger brother appears to have passed 10th Standard Examination and therefore, an application dated 06.03.2002 was made in his name for grant of appointment on compassionate ground. It is not disputed that this application was kept pending and no orders were passed. In the meantime, the Government of Tamil Nadu imposed a ban on recruitment, except certain categories of posts such as Teachers, Doctors and Police Constabulary, which were identified and declared as essential posts, vide G.O.Ms.No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001. The said ban was lifted only on 07.02.2006, vide G.O.(Ms)No.14, Personnel and Administrative Reforms (P) Department.

5.The appellant's case is that though his brother, who is better qualified had applied, his application has not been considered. Then, he was advised to submit an application in his name, since he studied upto 8th Standard and possessed Driving Licence and as there were fair chances for the appellant being accommodated in an existing vacancy. Therefore, an application was filed by the appellant on 01.10.2006 and the same has been rejected by the order, dated 18.07.2009 and challenge to the said order failed, since the Writ Petition was dismissed.

6.The learned counsel for the appellant after reiterating the facts, submitted that the decision of the Division Bench of this Court in **State of Tamil Nadu, Rep. by the Secretary to Government, Education Department, Chennai and others Vs. R.Nagamani and another** reported in **2008 (5) MLJ 1**, considered some what a similar case and held the choice to apply for compassionate appointment is given either to the senior most eligible person or any qualified person in the family of the deceased. Therefore, it is submitted that there is nothing wrong in the appellant submitting an application, when the application submitted by his younger brother



7.The learned Government Advocate, while seeking to sustain the order passed in the Writ Petition, referred to the dates and submitted that the application is grossly belated one and if it is considered, it will defeat the purpose and conditions for appointment on compassionate ground.

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8.After hearing the learned counsel appearing for the parties and carefully perusing the materials placed on record, we are of the view that under normal circumstances, we would have had no hesitation to reject the appeal. But, in the peculiar facts of the present case, where admittedly, the application submitted by the appellant's brother in the year 2002 was not disposed of and kept pending and after the ban on appointment was lifted, the appellant had submitted his application. Thus, when there is a choice for the legal heirs of the deceased employee, who chose among themselves to file an application for compassionate appointment and when the appellant's brother has given his no objection, the respondents should consider the application on merits and in accordance with law. Needless to state that the respondents are entitled to verify the indigent circumstances of the family of the appellant as to whether there is a need for granting appointment to him on compassionate ground as on date.

9.In the result, this Writ Appeal is allowed. The order dated 28.09.2001, passed in W.P.(MD)No.10854 of 2009 is set aside and the respondents are directed to consider the appellant's application for appointment on compassionate ground on merits and in accordance with law by verifying the financial status and other parameters. This direction be complied with within a period of six weeks from the date of receipt of a copy of this Judgment. No costs.

Sd/-

Assistant Registrar(AD II)

/TRUE COPY/

Sub Assistant Registrar

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To

1.The District Educational Officer,
Cheranmahadevi, Tirunelveli District.

2.The Assistant Elementary Educational Officer,
Kalakad, Tirunelveli District.

+1 cc to MR.K.ESAKKI, ADVOCATE, SR NO: 54413

+1 CC to M/S.SPL.GOV.T.PLEADER, SR NO: 54735

JAM/12.05.17/JC/SAR 4/3p-5C