

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.394 of 2017

A.Elanchezhian

...Appellant

Vs

- 1.The State of Tamil Nadu
Rep. by Secretary to Government,
Education Department,
Fort St.George, Chennai 9.
 - 2.The Director of School Education,
College Road, Chennai - 600 006.
 - 3.The District Elementary Educational Officer,
Thiruvarur District, Thiruvarur.
 - 4.The District Educational Officer,
Thiruvarur District, Thiruvarur.
- ...Respondent

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 16.08.2016 in W.P.No.14547 of 2012.

PRAYER IN WP.14547 OF 2012:

Petition preferred to this court to issue a writ of Certiorarified mandamus to call for the records of the 2nd respondent issued MU.M.N.53107/J2/2001 dated 19.12.2011 and quash the same consequently to direct the respondents to appoint the petitioner on compassionate ground in Government service in a suitable post in accordance with the petitioners qualification.

For Appellant : Mr.R.Saseetharan

For Respondents: Mr.K.Karthikeyan GA (Edu)
Spl.Govt.Pleader

J U D G M E N T

(made by K.K. SASIDHARAN, J.)

The application submitted by the appellant for compassionate appointment was rejected by the Director of School Education. The order was unsuccessfully challenged before the Writ Court in W.P.No.14547 of 2012. The order dated 16 August 2016 dismissing the writ petition is under challenge in this intra court appeal.

2. The appellant is the son of Thiru.T.Ayyasamy, who died on 16 July 1996. He was working as Primary School Headmaster in Panchayat Union Elementary School in the district of Thiruvarur.

3. The appellant initially submitted application for compassionate appointment through his mother on 16 June 1997. The Director of School Education by proceedings dated 22 February 1999 called upon the appellant to clarify as to why the eldest in the family failed to submit application for compassionate appointment. In short, the Director of School Education wanted the appellant to clarify as to why the second son of the deceased employee made the application even though there were elders to him qualified for appointment in Government service. The explanation submitted by the appellant was not accepted by the District Educational Officer. The competent authority by order dated 19 March 1999 rejected the application for compassionate appointment.

4. When a challenge was made to the order rejecting compassionate appointment before this Court in W.P.No.45994 of 2006, the submissions made on behalf of the appellant was accepted and the same resulted in setting aside the order. This Court by order dated 8 August 2011 in W.P.No.45994 of 2006 directed the Director of School Education to consider the case of the appellant for compassionate appointment on merits.

5. The Director of School Education once again rejected the application by order dated 19 December 2011 on the ground that his brother by name Thiru.A.Manimaran was living with the family and that he was employed. The order dated 19 December 2011 was challenged before the Writ Court in W.P.No.14547 of 2012. Before the learned single Judge, the appellant submitted that his brother was not a permanent employee and that he was working only as a sub-staff in a private college. Even then, the learned single Judge dismissed the writ petition.

6. The appellant submitted application for compassionate appointment on 16 June 1997. The employer was expected to consider the monetary condition of the family and decide as to whether the applicant was eligible for compassionate appointment. The Director of School Education instead of considering the financial condition of the family and as to whether the family is in a position to survive even after the death of the bread winner, rejected the application only on the ground that the second son was the applicant and not the eldest member of the family. The order was rightly set aside by the learned single Judge.

7. The application was once again rejected on the ground that by the time it was considered, the brother of the appellant was employed. The order was passed on 19 December 2011. It is clear that the event which took place more than ten years after the death of the employee was taken into account for rejecting the request for compassionate appointment. Even otherwise, the respondents were not correct in denying compassionate appointment on the ground of employment of Thiru.A.Manimaran, the brother of the appellant, who was working as casual labourer in a private college. Thiru.A.Manimaran is major and is stated to be residing separately with his family. The fact that when application for compassionate appointment was considered subsequently, the brother of the appellant got employment in a private concern, cannot be a valid reason to reject his application.

8. The father of the appellant died on 16 July 1996. The application submitted for compassionate appointment immediately thereafter was rejected after a period of 15 years taking into account the subsequent events.

9. The respondents have no case that the family was in an affluent position at the material point of time. In the earlier order of rejection dated 19 March 1999, it was not the case of the Director of School Education that the family was in an affluent position and as such, they were not eligible for compassionate appointment. It was only when the order was set aside by the High Court a different reason was projected to deny compassionate appointment. This material aspect was not considered by the learned single Judge. We are therefore of the view that the impugned order is liable to be set aside.

10. In the result, the order dated 19 December 2011 on the file of the Director of School Education is set aside. We direct the second respondent to consider the application of the appellant for compassionate appointment on merits and without reference to the factum of temporary employment of his brother as indicated in the impugned order. Such exercise shall be

completed within a period of three months from the date of receipt of a copy of this judgment.

11. In the up shot, we allow the intra court appeal. No costs.

Sd/-
Assistant Registrar (CS-viii)

//True Copy//

Sub Assistant Registrar

svki

To

- 1.The Secretary to Government,
The State of Tamil Nadu
Education Department,
Fort St.George, Chennai 9.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
- 3.The District Elementary Educational Officer,
Thiruvarur District, Thiruvarur.
- 4.The District Educational Officer,
Thiruvarur District, Thiruvarur.

+1cc to the Government Pleader, S.R.No. 6588
+1cc to Mr.R.SASEETHARAN, Advocate, S.R.No. 6548

W.A No.394 of 2017

NM(CO)
TR(07/03/2018)

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