

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1262 of 2016
and CMP Nos.16307 & 16308 of 2016

1. State of Tamil Nadu,
Rep. By its Secretary to Govt.,
School Education Department,
Secretariat, Chennai 600 009
 2. The Director of School Education,
Chennai 600 006.
 3. The District Education Officer,
Namakkal,
Namakkal District 637 001. Appellants
- versus
- M.Sukumar ... Respondent

Appeal filed against the order passed by this Court dated 28.04.2016 passed in W.P.No. 12121 of 2016. Writ petition praying for the issuance of certiorarified calling for the records pertaining to the order passed by the 3rd respondent in his proceedings Ni.Mu.No.1013/A1/2013 dated 24.06.2014 and quash the same and direct the respondents to consider the petitioner for compassionate appointment to the post of Junior Assistant by giving necessary relaxation as per the order passed in W.A.No.1565 of 2015 dated 16.10.2015 and confer all the consequential benefits

For appellants : Mr.K.Karthikeyan, Government Advocate
For Respondent : Mr.Vediyappan
for M/s. C.S.Associates

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This Intra Court Appeal is directed against the order of the learned Single Judge dated 28.04.2016 made in WP No.12121 of 2016, in and by which, the Writ Petition filed by the

respondent, challenging the order of the 3rd respondent in his proceedings Ni.Mu.No.1013/A1/2013 dated 24.06.2014, was allowed and the respondents were directed to consider the petitioner for compensate appointment to the post of Junior Assistant by giving necessary relaxation of age, as per the order passed in the Writ Appeal No.1565 of 2015 dated 16.10.2015, and confer all the consequential benefits.

2. The facts that led to the filing of the Writ Petition are as follows:

The Petitioner's father, who was working as a Record Clerk in Government High School, S.Pudupalayam, Namakkal District, died in harness on 17.02.2009, leaving behind his wife, the petitioner and one daughter. The petitioner's mother made a representation dated 13.02.2012, seeking appointment to the petitioner on compassionate ground. The 3rd respondent was instructed by the 2nd respondent, to pass appropriate orders on the said representation dated 13.02.2012, by taking note of G.O.Ms.No.9, Labour & Employment Department, dated 19.01.1998. The 3rd respondent by the impugned order dated 24.06.2014, rejected the request of the petitioner for appointment on compassionate ground, for the reason that he is over-aged as he has crossed 37 years as against the upper age limit of 35 years fixed in G.O.Ms.No.9, dated 19.01.1998.

3. The Hon'ble Single Judge after adverting to the decision of the Division Bench of this Court, made in WA No.1565 of 2015 dated 16.10.2015, had held that the Government has got powers for relaxation for the upper age limit, as per the G.O.(I). No.785, dated 30.12.1996 allowed the Writ Petition, directing relaxation of the age limit. Aggrieved by the said order, the respondents in the Writ Petition are on appeal.

4. We have heard Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants and Mr.Vediyappan, learned counsel appearing for M/s. C.S.Associates for the respondent.

5. Mr.Karthikeyan, learned Government Advocate appearing for the appellants would contend that the discretion to relax the upper age limit is vested in the respondents and there cannot be a positive direction by the learned Single Judge, to relax the age limit and to provide compassionate appointment for the 1st respondent. The learned Government Advocate however, does not dispute the fact that the Government order referred to above, viz., G.O.(I). No.785, dated 30.12.1996, enables the Government to relax the upper age limit in deserving cases. The respondent belongs to Schedule Caste Community and it is not in dispute that he was unemployed on the date of the death of the father.

It is also not in dispute, that the family was solely depended on the income of the father, who died on 17.02.2009, while in service.

6. The very provision for compassionate appointment is introduced by the Government, only with a view to provide employment to an eligible member of the family, in order to enable the family to get over the immediate necessities and the impact of the sudden demise of the sole bread winner of the family. This is precise reason, as to why, the Government itself has passed order enabling the authorities to grant relaxation of upper age limit in deserving cases.

7. In view of the undisputed fact that no other member of the family was gainfully employed when the sole bread winner, viz. Mookan, the father of the petitioner died in harness. The fact that the said Mookan was the sole bread winner and his untimely death had resulted in the family being left in penury is not disputed. In such circumstances, we do not see any reason to interfere with the order of the learned Single Judge insofar as he directs the respondents to consider relaxation of the upper age limit. At the same time, we are of the view the positive direction given by the learned Single Judge, directing the respondents to relax the upper age limit and provide employment to the petitioner/respondent cannot be sustained. Whether to grant relaxation of the upper age limit or not is within a domain of the respondents to decide. G.O.(I). No.785 dated 30.12.1996, is only an enabling Government Order, which invests the power for relaxation on the authorities in a deserving case. Therefore, we are of the view that the appeal should be partly allowed, quashing the impugned order and directing the respondents to consider the relaxation of the upper age limit in terms of G.O.(I). No.785, dated 30.12.1996.

8. In fine, the Writ Appeal is partly allowed, the positive direction granted by the learned Single Judge, directing the appellants to relax the upper age limit and provide employment to the respondent is set aside and instead the Writ Petition will stand disposed of, with the following direction. The impugned order dated 24.06.2014, rejecting the representation seeking compassionate appointment will stand set aside. The authorities are directed to consider the question of relaxation of the upper age limit, taking into account the facts and circumstances of the case, as well as the fact that the petitioner in the Writ Petition, belongs to Schedule Caste community. Such exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order. We are sure that the authorities will consider the case of the respondent sympathetically bearing in mind the object and purpose of the scheme for compassionate appointment.

9. The Writ Appeal is disposed of with the above direction. There will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Secretary to Govt.,
Government of Tamil Nadu
School Education Department,
Secretariat, Chennai 600 009

2. The Director of School Education,
Chennai 600 006.

3. The District Education Officer,
Namakkal,
Namakkal District 637 001.

+ 1 cc to M/s. C.S. Associates Advocate Sr.26245

+ 1 cc to Mr. Government Pleader SR.26277

W.A.No.1262 of 2016
and CMP Nos.16307 & 16308 of 2016

MG (CO)
EU (20/04/2018)

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